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March 19, 2004

VIA ELECTRONIC DELIVERY

William Maher, Bureau Chief
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Comments of SNiP LiNK, LLC; In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; CC Docket No. 01-338

Dear Mr. Maher:

SNiP LiNK, LLC ("SNiP") hereby submits these comments in opposition to BellSouth Telecommunications' ("BellSouth") Petition for Waiver of the FCC's Enhanced Extended Link ("EEL") rules as promulgated in the Federal Communications Commission's ("FCC" or "Commission") *Triennial Review Order*. Although SNiP does not operate within BellSouth's territory and does not purchase network elements from BellSouth, SNiP comments briefly on the impact the request could have on the availability of EELs in the broader market.

BellSouth's petition, at bottom, encourages the FCC to slow roll the deployment of network element combinations and to stymie the ability of CLECs to obtain access to EELs. The Commission properly concluded otherwise in the *Triennial Review Order*, however. In the *Triennial Review Order*, the Commission found that there is no public interest benefit to continuing to prohibit commingling or to maintaining the overly burdensome "safe-harbors" applicable to conversions of special access circuits to EELs. The Commission further concluded that EELs "facilitate the growth of facilities-based competition in the local market," "extend the geographic reach for competitive LECs" and "promote innovation because competitive LECs can provide advanced switching capabilities in conjunction with loop-transport combinations." The Commission should not retreat from its conclusions at the request of BellSouth, particularly in light of the current market conditions.

SNiP's own experience with incumbent carriers has been that CLEC access to EELs has, in fact, been proceeding *too slowly*, rather than too quickly or prematurely. Incumbent carriers continue to force CLECs to endure a time-consuming "safe-harbor" analysis to convert special access to EELs, which are based on standards first outlined in the *Supplemental Order Clarification*. It is ironic that BellSouth would urge the Commission to retreat from the goals announced in the *Triennial Review Order* which were designed to alleviate the confusion, delay, and "additional layers of regulation" associated with the "safe harbor" provisions in exchange for BellSouth's suggestion of stagnant (or non-existent) growth of facilities-based competition in the local market. As the Commission concluded, the old "safe harbor" usage restrictions are inferior to the service eligibility criteria adopted in the *Triennial Review Order*.

Furthermore, it has been SNiP's experience that CLECs are facing additional barriers to obtaining EELs due to ILECs' failures to implement routine network modifications per the requirements in the *Triennial Review Order*. The *Triennial Review Order* stated that ILECs were required to perform those network modification activities that they regularly undertake for their own customers with respect to unbundled transmission facilities used by requesting CLECs. Nevertheless, incumbents continue to persist in the dilatory claim that the Commission's clarification was not self executing and instead requires an amendment to the interconnection agreement. In the meantime, SNiP continues to have orders rejected because the ILEC refuses to perform routine network modifications to provision the UNE.

Therefore, the Commission is fully justified in moving forward with its mandate that ILECs are required to make EELs available pursuant to Section 251(c)(3) of the Act. BellSouth's petition asks the Commission to excuse it from its provisioning responsibilities because of the *possibility* of a contrary ruling by the federal courts. Contrary to the implication in the BellSouth petition, immediate implementation of the *Triennial Review Order* EEL provisions is neither premature nor legally suspect. In fact, the *USTA II* decision agreed that the FCC's conclusions regarding access to EELs and the benefits of EEL deployment were reasonable. The Court of Appeals expressed its opinion on EELs by stating,

> "We think that the Commission's eligibility criteria, though imperfect, reflect a reasonable effort to establish an administrable system that balances two legitimate but conflicting goals: the prevention of ''gaming'' by CLECs seeking to offer services for which they are not impaired, and the preservation of unbundled access for CLECs seeking to offer services for which they are impaired. We accord considerable deference to such administrative determinations, *(citations omitted)*, and find that the proxies the FCC used, though imperfect (as the Commission itself candidly admits, Order ¶ 600), are neither

inconsistent with the Act nor arbitrary and capricious." (*USTA II* at 58-59).

Thus, the FCC's goals are more likely than not to survive further judicial scrutiny, if such scrutiny occurs. The objectives the FCC announced in the *Triennial Review Order* concerning EELs are the goals to promote fair and effective competition in the market. As SNiP has noted herein, the FCC should not slow the deployment of EELs to satisfy speculative pleas that substantial resources will be wasted if special access circuits are converted to EELs before states conclude their loop and transport impairment cases.

* * *

In closing, the Commission should not only reject BellSouth's petition, it should use this opportunity to make clear to incumbent carriers that they must implement the EEL rules without delay, including making clear that the network modification regulations are not subject to an unnecessary amendment process.

Respectfully submitted,

/s/ Steven A. Augustino /s/

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Counsel to *SNiP LiNK, LLC*

cc: Anthony Abate, President, SNiP LiNK, LLC